HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE R. SUBHASH REDDY

Writ Appeal No. 2570 of 2005

Between:

M/s. Praga Tools Limited, Secunderabad.

…appellant.

And

Employees Provident Fund Organisation

(Ministry of Labour, Government of India),

Regional Office at Barkatpura, Hyderabad and others.

… Respondents.

:: ORDER::

Counsel for the appellant : Ms. G. Sudha

Counsel for the respondents: R.N. Reddy, standing counsel for Employees Provident Fund Organisation.

December 28, 2005

Per G.S. Singhvi, CJ.

Dissatisfied with the conditional stay order passed by the learned Single Judge in Writ Petition No.24496 of 2005, the appellant has filed this appeal and prayed for staying the proceedings initiated by the competent authority under section 14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short, 'the Act').

The averments contained in the affidavit filed in support of the Writ Petition No.24496 of 2005 which is pending before the learned Single Judge shows that the appellant persistently defaulted in paying salary to its employees from May, 1998 to June, 2001 and again from February 2002 to May, 2005. This resulted in initiation of proceedings under the Act and the competent authority has, from time to time, passed orders for levy of penalty under Section 7-Q of the Act. The petitioner challenged the demand notices issued under the Act by filing Writ Petition No.21604 of 2005 which was disposed of by the learned Single Judge, vide his order dated 1.12.2004 with a direction that the petitioners shall be at liberty to approach Chairman, Central Board of Trustees for waiver of penal damages. However, instead of making representation for waiver of penalty and damages, the appellant filed Appeal No.279(1) of 2005, which was dismissed by the Employees Provident Fund Appellate Tribunal, New Delhi vide its order dated 25.7.2005 with the following observations:

> "2. No order under Section 14-B of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 (for short 'the said Act') has been passed. The so-called order dated 8.10.2001 is nothing but a show cause notice. No appeal against a show cause notice is maintainable under Section 7-I of the said Act. Even the prohibitory notice issued under Section 8 is also not assailable by way of appeal as is evident from perusal of the Section 7-I of the said Act. The cause of action arises only if an order is passed under Section 14-B of the said Act. But, at the same time, it is also observed that the respondent had no authority under the law to recover the amount merely on the basis of the show cause notice until and unless an appropriate order passed under Section 14-B of the said Act, after affording

opportunity to the appellant, is passed. In accordance with the law, no such recovery can be made on the basis of show cause notice.

3. With the above observations, the appeal is dismissed as not maintainable. Appeal file be consigned to record room. Copy of this order be given to both the parties."

Thereafter, the Regional Provident Commissioner (C & R), Andhra Pradesh, Hyderabad (Respondent No.1) issued notice dated 28.10.2005 requiring the appellant to show cause against proposed levy of damages under section 14-B of the Act and fixed the date of hearing as 16.11.2005.

The appellant did not file reply to contest the aforementioned notice. Instead, it filed writ petition on 14.11.2005 questioning the order dated 25.7.2005 passed by the Appellate Tribunal and notice dated 28.10.2005 issued by respondent No.1. Simultaneously, it filed an application for staying the operation of order dated 25.7.2005

The learned Single Judge disposed of the application by recording the following order:

The learned counsel for the respondents submit that contrary to the orders of this court in W.P.No.21604 of 2004, the petitioner filed appeals before the 2nd respondent and the same were dismissed in ATA.No.279(1) dt.25.7.2005.

A perusal of the order of the said WP goes to show that the petitioner is permitted to file application under second provision to section 14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 before the 3rd respondent for waiver of penal damages, within two weeks.

Admittedly, no applications have been filed fork the waiver of penal damages before the 3rd respondent. The 2nd respondent rightly dismissed the appeals filed by the petitioner as they are not maintainable and filed contrary to directions of this Court in W.P.No.21604 of 2004.

> In those circumstances, I am of the view that the petitioner is not entitled to seek stay. However, having regard to the facts and circumstances of the case, there shall be interim stay as prayed for, on condition of petitioner paying one third of the impugned damages amount, within a period of six weeks from today.

Ms. Sudha, learned advocate for the appellant invited our attention to representation dated 3.12.2005, which is said to have been made by the appellant to the Board of Trustees for waiver of penalty and damages and argued that the direction given by the learned Single Judge for payment of one third of the damages should be set aside. Learned counsel emphasized that payment of salary to the employees was delayed on account of non-release of funds by the Government of India and submitted that the court may take cognizance of the representation dated 3.12.2005 and stay the proceedings initiated for determination of damages till the same is decided.

We have given serious thought to the arguments of the learned counsel but have not felt persuaded to agree with her. In our opinion, the proceedings initiated by respondent No.1 for determination of the damages do not suffer from any jurisdictional infirmity or error of law warranting interference by this court. Indeed, it is not even the case of the appellant that the concerned Regional Provident Commissioner does not have the jurisdiction to issue notices for taking action under section 14-B. That apart, there is no provision in the Act under which the proceedings initiated by the competent authority for fixing quantum of damages can be deferred during the pendency of representation made before the Board of Trustees. The learned single Judge has adopted an extremely liberal approach in partially entertaining the request made on behalf of the appellant. Therefore, we do not find any valid ground or justification to interfere with the discretion exercised by him in the matter of grant of stay.

For the reasons stated above, the appeal is dismissed.

G.S. SINGHVI, CJ.

R. SUBHASH REDDY, J.

December 28, 2005.

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